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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,321	06/27/2001	Sergey N. Razumov	59036-022	3651

7590 07/12/2005

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EXAMINER	
O'CONNOR, GERALD J	

ART UNIT	PAPER NUMBER
3627	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/891,321	Razumov	
	Examiner	Art Unit	
	O'Connor	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *THREE* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *April 12, 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) *1-13 and 27-30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *October 18, 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Preliminary Remarks

1. This Office action responds to the amendment and arguments filed by applicant on April 12, 2005 in reply to the previous Office action, mailed February 8, 2005.

2. The amendment of claim 14 in the reply filed by applicant on April 12, 2005 is hereby acknowledged.

Election/Restriction

3. Claims 1-13 and 27-30 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed November 17, 2004.

Claim Objections

4. Claim 14 is objected to because of the following informality: it appears that "the evolution marks" (line 12) was intended to be --the evaluation marks--, which change will be assumed for purposes of further consideration of the claims, hereinbelow. Appropriate correction (or clarification) is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 14-20, 22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al.

Regarding claims 14, 16, 18, 19, and 26, Bailey Jr. et al. disclose a method of selling goods, comprising the steps of: selecting human models representing categories of a pre-set classification of goods (styles and sizes/physical characteristics); trying on the goods by the human models of the respective categories, at least one model being assigned to try on goods that belong to a category of the classification (inherent); obtaining individual characteristics (measurements/sizes) of a customer to determine to which category in the pre-set classification of goods the customer belongs; assigning by a computer system to the customer the category (size) that corresponds to a human model having similar individual characteristics (sizes/measurements) as the customer; determining evaluation marks by the computer system (inherent: customer's evaluation for example, "buy," "don't buy," etc.) for the goods in the category assigned to the customer; pre-selecting by the computer system, based on the determined evaluation marks, a group of items (the items to be purchased) among the goods in the category assigned to the customer; and, enabling the customer to access said group of items.

See, in particular, the paragraph bridging pages 6 and 7, as well as the paragraph immediately thereafter. The method of Bailey Jr. et al., though, does not include that the evaluation marks are pre-set based on evaluating the goods tried on by the respective model, nor that a model or an expert makes the evaluation or selection. However, it is common in the art for evaluations to be made by experts or the person trying on clothes. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to employ a model or an expert to make the evaluation or selection, because such individuals would be qualified to make a correct evaluation/selection.

Regarding claim 15, the method of Bailey Jr. et al. includes that the customer is enabled to watch video images depicting in motion the human models wearing the pre-selected items.

Regarding claim 17, the goods of Bailey Jr. et al. include clothes items.

Regarding claim 20, the pre-set classification of Bailey Jr. et al. takes into account body types of customers (sizes/physical characteristics).

Regarding claim 22, Bailey Jr. et al. do not teach that the classification takes eye color into account. However, it is common in the art to recommend clothing based on a customer's eye color. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to employ the step of taking eye color into account for classification to select clothing that would complement a customer's eyes.

Regarding claims 24 and 25, the method of Bailey Jr. et al. includes that the customer is enabled to access data on additional items associated with each of the pre-selected items

(e.g., style variations, etc.), wherein the additional items are pre-selected when the goods are tried on by the human model (inherent).

7. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al., in view of Weaver.

Bailey Jr. et al. disclose a method of selling goods, as applied above in the rejection of claims 14 and 20 under 35 U.S.C. 103(a), but Bailey Jr. et al. do not teach that a customer's hair color or skin tone are taken into account. However Weaver discloses a similar method, and the method of Weaver indeed teaches taking hair color (17) and skin tone (15) into account in making recommendations/selections. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Bailey Jr. et al. so as to take hair color and/or skin tone into account when recommending/selecting items, in accordance with the teachings of Weaver, in order to recommend/select items of clothing that would best complement a particular customer.

Response to Arguments

8. Applicant's arguments filed April 12, 2005 have been fully considered but are not persuasive.

9. The arguments regarding the previous prior art rejections have been considered, but have been rendered moot by applicant's amendment, and the consequent new grounds of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to the disclosure.

11. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is (571) 273-6787.

The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Alexander Kalinowski, can be reached at (571) 272-6771.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (571) 273-8300**. Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC
June 16, 2005

(6-16-05)

Gerald J. O'Connor
Primary Examiner
Group Art Unit 3627